IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
NOTICE OF MOTION NO.285 OF 2003
IN
WRIT PETITION NO.111 OF 2002

New Sion Co-operative Housing Society Ltd. Petitioner

Vs.

State of Maharashtra & Ors. Respondents

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Shri J.J.Thakkar for the Petitioner.

Smt.M. Kajale for Respondent Nos.1 to 3.

Shri B.G.Ahuja, respondent No.4 in person.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 9TH AUGUST, 2004.

P.C.

1. Heard the learned advocate for the applicant and the learned AGP for State as well as the respondent No.4 in person.

ii.On perusal of the records, it is apparent that the matter was dismissed on 4th June, 2003, on account of sheer negligence on the part of the advocate for the petitioner, and for that reason, the petitioner cannot be blamed. The decisions sought to be relied upon by the respondent No.4, viz. in the matter of Jain Exports Pvt. Ltd. & Anr. V. Union of India & Ors., reported in AIR 1993 SC 2383 and of Calcutta High Court in Phul Chand Ranilia v. Ballabhdas Agarwal & Anr., reported in AIR 1973 Calcutta 54, are of no assistance in the matter as the records apparently make out a sufficient case in favour of the petitioner for ordering restoration of the Writ Petition No.111 of 2002 which was dismissed on 4th June, 2003. The decision of the Apex Court in Jain Exports Pvt. Ltd.'s case (Supra) was on the point of granting rehearing to the

party for the purpose of production of the documents, which the party had failed to produce earlier. As regards the decision of Calcutta High Court in Phul Chand Ranilia's case (Supra), the same is on the point that merely a mistake on the part of the advocate for the party cannot be a justification to penalize a party itself when it comes to the case of dismissal of the proceeding for default. Being so, in the facts and circumstances of the case, I am satisfied that the Writ Petition No.111 of 2002 needs to be restored to the board and to be listed for hearing in the next week i.e. on Tuesday the 17th August, 2004.

iii. The petitioner shall be liable to pay costs of Rs.5,000/- which shall be deducted from the amount already deposited in the Court and a sum of Rs.3,000/- from the said amount of Rs.5,000/- shall be payable to the respondent No.4 and the balance amount of Rs.2,000/- shall be credited to the account of Maharashtra State Legal Services Authority.

4. Notice of Motion is disposed of in above terms.

(R.M.S.Khandeparkar, J)